

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Zev Carter	Team: Squad #3	CCRB Case #: 201808152	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 09/24/2018 8:00 AM	Location of Incident: 331 East 138th Street	Precinct: 40	18 Mo. SOL 3/24/2020	EO SOL 11/8/2020	
Date/Time CV Reported	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 10/02/2018 11:01 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Russell Lewis	31012	927082	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Russell Lewis	Force: Police Officer Russell Lewis used physical force against § 87(2)(b)	
B.POM Russell Lewis	Abuse: Police Officer Russell Lewis arrested § 87(2)(b)	
C.POM Russell Lewis	Force: Police Officer Russell Lewis used physical force against § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On September 25, 2018, § 87(2)(b) filed this complaint with IAB over the phone from § 87(2)(b) (14 Board Review). The CCRB received this complaint on October 2, 2018.

On September 25, 2018, at 7:59 a.m., § 87(2)(b) entered the Dunkin Donuts at 331 East 138th Street in the Bronx and spoke briefly to Police Officer Russell Lewis of the 40th Precinct. PO Lewis walked towards § 87(2)(b) to remove him from the premises. PO Lewis used physical force against § 87(2)(b) (Allegation A: Force, § 87(2)(g)). Both men went to the ground, and, in the process, the glass door of the restaurant was broken. PO Lewis arrested § 87(2)(b) for resisting arrest and criminal mischief (Allegation B: Abuse of Authority, § 87(2)(g)). As § 87(2)(b) was being brought to Bronx Central Booking, PO Lewis punched § 87(2)(b) in the spine and face (Allegation C: Force, § 87(2)(g)). § 87(2)(b) was removed to § 87(2)(b) from Bronx Central Booking. § 87(4-b), § 87(2)(g)

Despite contact attempts, § 87(2)(b) was unavailable to this investigation. However, because video footage captured the incident, an investigation commenced. § 87(2)(g)

The District Attorney's office declined to prosecute § 87(2)(b)

This case contains video evidence from a security camera installed inside of the restaurant (01 Board Review).

Findings and Recommendations

Allegation (A) Force: Police Officer Russell Lewis used physical force against § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Russell Lewis arrested § 87(2)(b)

In a brief and frenetic phone statement to IAB, § 87(2)(b) stated that on September 24, 2018, he was attacked by PO Lewis and Police Officer Ruben Serrano from the 40th Precinct for no reason (02 Board Review).

§ 87(2)(b) § 87(2)(b) of the Dunkin Donuts at 331 East 138th Street in the Bronx, told members of the CCRB's field team that § 87(2)(b) was inside of the store harassing people (17 Board Review). An individual in a black hooded sweatshirt (identified by the investigation as PO Lewis) attempted to calm him down and then attempted to force § 87(2)(b) to leave the store, before a scuffle ensued between them. § 87(2)(b) did not state that § 87(2)(b) was told to leave the premises by store employees prior to the scuffle. § 87(2)(b) was unavailable to the investigation after multiple contact attempts. The phone number for the Dunkin Donuts in which the incident occurred was disconnected.

PO Serrano stated that he was working an overtime detail at 42nd Street and 2nd Avenue in Manhattan for the United Nations General Assembly from 4:10 a.m. to 4:00 p.m. on the date of the incident (03 Board Review). PO Serrano's memo book confirms this assignment and includes a "scratch" from Sgt. Kelly of the Citywide Traffic Task Force (16 Board Review).

PO Lewis stated that § 87(2)(b) is a well-known figure to officers of the 40th Precinct (**04, 05 Board Review**). On past occasions, § 87(2)(b) has filmed officers at the beginning and end of their tours, and he washes the precinct's department vehicles without being asked to. PO Lewis did not know of any incidents wherein § 87(2)(b) acted violently towards anybody.

At approximately 7:59 a.m. on September 24, 2018, PO Lewis entered the Dunkin' Donuts at 331 East 138th Street in the Bronx to order breakfast. He entered the restaurant behind a woman who he did not know. The two were followed by § 87(2)(b) who said, "I like big butts and I cannot lie!" in the cadence of the 1992 Sir Mix-a-lot song "Baby got Back." PO Lewis and the woman brushed off the comment and entered the store. The woman sucked her teeth, but had no further reactions to § 87(2)(b)'s presence. § 87(2)(b) left PO Lewis and the woman alone.

A few minutes later, § 87(2)(b) returned to the restaurant. He was holding a cold drink in one of his hands. Immediately, he walked towards PO Lewis and told him, "Officer, do you have your taser on you? 'Cause I'm off my meds. You're going to have to tase me today." The side of PO Lewis's body that § 87(2)(b) was closest to was the where PO Lewis's gun was holstered. PO Lewis took this statement and act of walking towards him to be threatening, as if § 87(2)(b) were about to "do something." PO Lewis could not specify what this might have been. He angled his body away from § 87(2)(b) in response. PO Lewis stated that apart from making this comment and walking towards him, § 87(2)(b) took no additional threatening actions.

At this moment, PO Lewis determined that § 87(2)(b) was emotionally disturbed. This determination was made on the grounds of § 87(2)(b)'s statement. No additional factors led PO Lewis to determine that § 87(2)(b) was a threat to himself or to others.

§ 87(2)(b) did not address any additional individuals inside of the restaurant. No civilians inside of the restaurant expressed that they wanted § 87(2)(b) to leave the location or asked PO Lewis to remove § 87(2)(b).

PO Lewis decided to escort § 87(2)(b) out of the restaurant because of his "disruptive behavior." PO Lewis was "annoyed" at § 87(2)(b) because he was being "disruptive," "disorderly," and "disrespectful." With his body angled away from § 87(2)(b) he put one of his hands out towards § 87(2)(b). § 87(2)(b) started to backpedal. PO Lewis followed § 87(2)(b) still with the intention to escort him out of the restaurant. PO Lewis told § 87(2)(b) to "just go," but it appeared that § 87(2)(b) was not willing to leave the location, even as he was still backpedaling.

Seconds later, § 87(2)(b) raised one of his arms and moved it back and forth. In this process, § 87(2)(b) splashed his drink on PO Lewis's face. PO Lewis stated that this action was intentional, and that by doing this, it was § 87(2)(b)'s intention to prevent PO Lewis from grabbing his arms to escort him out of the restaurant. PO Lewis stated that § 87(2)(b)'s "walking aggressively" towards him and his refusal to leave the location contributed to this judgement.

When PO Lewis was asked about what in § 87(2)(b)'s behavior indicated that he would not leave the location, Kate Conlon, legal counsel for PO Lewis, interrupted PO Lewis and said, "Just because he's walking back does not mean he's walking back to the door to go outside, it just

means he's walking back." When the question was repeated, PO Lewis responded, "Well, it was his demeanor." Ms. Conlon interrupted again, and stated, "So it was just the totality of the circumstances." PO Lewis repeated, "the totality."

After § 87(2)(b) raised his arm and moved it from side to side, PO Lewis grabbed § 87(2)(b)'s arm. Then, the two started "wrestling and grappling." The two men were bear-hugging each other's upper bodies.

Up until this point, it was only PO Lewis's intention to remove § 87(2)(b) from the building. However, once this "wrestling and grappling" began, PO § 87(2)(b) considered § 87(2)(b) to be under arrest for resisting arrest and no other charge.

PO Lewis and § 87(2)(b) slipped on the ground, which was wet from the spilled drink. Both men fell to the floor. In his first interview, PO Lewis stated that § 87(2)(b) broke the glass door of the restaurant during the two men's struggle on the floor, in which PO Lewis was still bear-hugging § 87(2)(b). In his second interview, PO Lewis stated that the glass was broken by his own back after he slipped. In both interviews, PO Lewis stated that the two men fell to the floor accidentally, and that the glass was broken accidentally. Once the glass was broken, PO Lewis stated that § 87(2)(b) could be arrested for criminal mischief, as well. PO Lewis stated that in addition to resisting arrest and criminal mischief, § 87(2)(b) could also have been arrested for Obstruction of Governmental Administration for preventing his own arrest and refusing to leave the restaurant or put his hands behind his back.

TRI #§ 87(2)(b) was created for this incident (**13 Board Review**). The document lists PO Lewis as the reporting MOS. The document was entered and approved by Sergeant Jeffrey Baio of the 40th Precinct. "Disorderly person" is listed under "event type." Under the "type of force used against MOS" section, the document reads that "wrestling/grappling," "pushing/shoving," and "object thrown" were all used against PO Lewis. The document reads that a forcible take down was used under the "type of force used by MOS section." "Defense of self" and "overcome resistance or aggression" are both listed under "reason for force."

PO Lewis was questioned about the TRI created for this incident. When asked about his involvement in its preparation, PO Lewis stated that Sgt. Baio interviewed him to complete it. PO Lewis was asked why the document read that a forcible takedown was used. He stated that this referred to the "wrestling and grappling" that led to § 87(2)(b) being taken to the floor. He also stated that, "In terms of 'force used,' the Department now is using that term very – to me – very loosely."

The incident was recorded on a security camera inside of Dunkin' Donuts (**01 Board Review**). § 87(2)(b) enters the restaurant at 0:01. A cup can be seen in his left hand. § 87(2)(b) approaches PO Lewis's left side at 0:25. PO Lewis responds by extending an arm towards § 87(2)(b) who walks backwards. PO Lewis walks in the same direction as § 87(2)(b). At 0:31, PO Lewis appears to be making physical contact with § 87(2)(b) lower torso, pushing him. At 0:32, PO Lewis grabs § 87(2)(b) left arm. § 87(2)(b) is leaning backwards. As PO Lewis and § 87(2)(b) walk towards the door, the footage does not capture any retaliatory force on the part of § 87(2)(b). He seems to be moving his arms to escape from PO Lewis's grasp at 0:32. The men move

to an area which is not in view of the camera until 0:35, when move into view near the restaurant's door. PO Lewis slips, breaking the glass door, and § 87(2)(b) lands on top of him. The two remain on the ground until 0:44, when other police officers arrive.

An individual must defy a lawful order to leave a location, personally communicated to him by someone authorized to revoke his privileges to enter or remain, in order for said individual to be trespassing. People v. Brown, 25 N.Y.2d 374 (1969) **(06 Board Review)**

NYPD Patrol Guide procedure 221-13 defines an emotionally disturbed person as one who “appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others” **(07 Board Review)**. Officers are to “make every effort to de-escalate the situation” when dealing with individuals whom they believe to be emotionally disturbed.

For an act to constitute disorderly conduct, “there must be an actual or threatened ‘breach of the peace.’” People v. Chesnick, 302 N.Y.58 (1950) **(08 Board Review)**.

According to NYPD Patrol Guide procedure 221-01, officers are authorized to use force “when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody” **(09 Board Review)**. Officers are instructed to “use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force,” when doing so is consistent with personal safety.

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

[REDACTED]

“A person is guilty of resisting arrest when he intentionally prevents or attempts to prevent a police officer or peace officer from effecting an authorized arrest of himself or another person.” New York State Penal Law § 205.30 (10 Board Review).

“A defendant cannot be convicted of obstructing governmental administration for interfering with an officer in the performance of an official function unless it be proved that the official function was an authorized one.” People v. Vogel, 116 Misc.2d 332 (App. Term 1982) **(11 Board Review)**.

In all degrees of Criminal Mischief under New York State Penal Law, a person must intentionally or recklessly damage property to be considered in violation of the statute. New York State Penal Law § 145.00-.12 (12 Board Review).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

In his first interview, PO Lewis stated that § 87(2)(b) broke the glass door of the restaurant during the two men’s struggle on the floor, in which PO Lewis was still bear-hugging § 87(2)(b). In his second interview, PO Lewis stated that the glass was broken by his own back after he accidentally slipped on the wet floor. In both interviews, PO Lewis stated that the two men fell to the floor accidentally, and that the glass was broken accidentally. Video evidence confirms that it was PO Lewis’s back which broke the glass door. § 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Force: Police Officer Russell Lewis used physical force against § 87(2)(b)

§ 87(2)(b) stated to IAB that while he was being removed from a police vehicle, PO Lewis punched him in the spine and face.

PO Lewis stated that § 87(2)(b) and other prisoners were taken to Bronx Central Booking by himself and another officer in a police van. § 87(2)(b) was rear-cuffed as he was unloaded from the van in a prisoner offloading area. § 87(2)(b) shrugged his body forward, striking PO Lewis's face and upper body. In this process, PO Lewis put his arms out towards § 87(2)(b) making contact with him. § 87(2)(b) walked backward in reaction, and did not complain of any pain.

The prisoner movement slip for the incident date was “not on file” at the 40th Precinct. PO Lewis could not recall the other officer who drove the van to Bronx Central Booking with him.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)

§ 87(2)(b)

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Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date